Supreme Court, U.S.
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No. 98-806

In the
Supreme Court of the United States
October Term, 1998

John W. Westling and Sharon Westling,
Petitioners,

v.

County of Mille Lacs, and
The State of Minnesota,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE MINNESOTA SUPREME COURT

REPLY BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

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Respondents County of Mille Lacs and the State of Minnesota oppose this Petition for Certiorari on the grounds that the constitutional violation at issue is largely unprecedented. They argue that no decision of this Court expressly prohibits the creation of, and subsequent taxation of, make-believe property values, and that apparently no other state has yet thought to do such a thing. Accordingly, they contend, this Court should ignore the case, presumably until other States have reached the inevitable conclusion that there is no better means of revenue enhancement than to declare new, previously unimagined property values, and tax them.

The Court should take this opportunity to make clear that the Constitution prohibits such "creative" means of taxation and grant the Petition for Certiorari in this case. The County of Mille Lacs did violate the Equal Protection Clause when it, pursuant to Minnesota statute, declared Petitioners' real property to have a taxable "contamination value," and then taxed that value. As a result, the Petitioners' real property, which Respondents concede has a market value of zero, was taxed as if it were worth more than one million dollars. The Minnesota Supreme Court's acceptance of the Respondents' arguments that such an abuse of the tax system constitutes nothing more than a rational "classification" warrants review. That decision distorts (and thereby conflicts with) this Court's rulings, and the fact that only one state may have yet had the audacity to violate the Constitution in this manner in no way diminishes the importance of the principle that a state may not tax a purported property value that simply does not exist.

If this Court agrees that what Respondents have done in this case is to merely create a new "classification," then it should deny this Petition. Such a conclusion would, however, be unprecedented, and would constitute an almost Orwellian use

of the language. Creation of a new type of "value" in no way resembles the sorts of the decisions that this court has previously considered to constitute "classifications"—decisions regarding what type of property may be taxed at what rates or what property should be taxed and what property should be exempt from taxation. *Cf. Bell's Gap R.R. Co. v. Pennsylvania*, 134 U.S. 232, 237 (1890) (listing the types of legislative decisions to which the courts will defer).

Petitioners do not challenge the "classification" into which their real property was placed or even the aspects of the contamination tax statute that provide for different tax rates depending on the taxpayer's responsibility for and remediation of the environmental contamination. Rather, Petitioners challenge the so-called "value" that the legislature saw fit to define by fiat and then tax. There is, quite simply, no precedent for finding that the creation of heretofore unheard of property "values" constitutes no more than a new "classification" of real property for tax purposes.

The only support Respondents find in this Court's decisions are its upholding of taxation based on property values that either are *less than* market value or, though perhaps differing from market value, nonetheless have a direct counterpart in the real world. *See Nordlinger v. Hahn*, 505 U.S. 1 (1992); *Bell's Gap*, 134 U.S. 232; *see also* Resp. Jt. Br. 17. In *Nordlinger*, this Court merely upheld California's infamous Proposition 13, which in relevant part limited increases in real property appraisals to two percent per year. The consequence, claimed a taxpayer, was that some property was taxed at less than market value. Not surprisingly, the Court found such limitations in the rate of growth of property taxation to be constitutionally permissible. How that holding supports the

intentional *overvaluation* of real property, as in this case, is less than clear. The Court's decision in *Bell's Gap* is even less germane. There the Court upheld Pennsylvania's taxation of the interest paid on corporate bonds based on the face value of those bonds. 134 U.S. 232. A corporation challenged the tax on the grounds that some bonds' market value differed from their face value. The Court found that the interest payments, which were what was being taxed, were based on the face value of the bonds, and so the State did not violate the Constitution when it based the tax on the interest payments on the same valuation.

Respondents in this case can point to no "real world" analogue to the "contamination value" in this case. Petitioners challenge not only the fact that so-called "contamination value" differs from market value, but the contention that there is such thing as contamination value. The only realm in which this "value" exists is in the Minnesota tax code. Assigning such a "value" to Petitioners' real property and then taxing it violates the Constitution because it is arbitrary, capricious, and discriminatory. No decision of this Court condones such a practice, and numerous decisions, as discussed in the Petition, require that property valuation bear some relationship to market value.

The Minnesota Supreme Court's decision upholding the contamination tax statute conflicts with decisions of this Court. And, although numerous states have not yet realized the benefits to be had from the taxation of fictional property values, the constitutional violation committed in this case is important. Petitioners ask, therefore, that this Court grant their Petition for a Writ of Certiorari.

Respectfully submitted,

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